



FEDERAL COMMUNICATIONS COMMISSION

47 CFR 64

[CG Docket No. 03-123; RM-11820; FCC 21-95; FR ID 57163]

Internet Protocol Relay Service Compensation Methodology

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) proposes to modify the methodology for determining compensation for the provision of Internet Protocol Relay (IP Relay) service and seeks comments on modifying the formula for determining the per-minute compensation for providers of IP Relay to ensure Interstate TRS Fund support is sufficient to sustain a functionally equivalent telephone service.

DATES: Comments are due [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]; reply comments are due [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by CG Docket No. 03-123 and RM-11820, by either of the following methods:

- *Federal Communications Commission's website:* <https://www.fcc.gov/ecfs/filings>. Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions on submitting comments and additional information on the rulemaking process, see document FCC 21-95 at: <https://docs.fcc.gov/public/attachments/FCC-21-95A1.pdf>.

FOR FURTHER INFORMATION CONTACT: William Wallace, Consumer and Governmental Affairs Bureau, at 202-418-2716, or William.Wallace@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (Notice), document FCC 21-95, adopted on August 5, 2021, released on August 6, 2021, in CG Docket No. 03–123 and RM-11820. The full text of document FCC 21-95 is available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Initial Paperwork Reduction Act of 1995 Analysis

The Notice in document FCC 21-95 seeks comment on proposed rule amendments to the compensation methodology that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another document in the *Federal Register* inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104–13; 44 U.S.C. 3501–3520.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Pub. L. 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. In document FCC 21-95, the Commission proposes to modify the methodology for setting compensation for IP Relay, a form of Telecommunications Relay Service (TRS).

2. With IP Relay, an individual with a hearing or speech disability can communicate with voice telephone users by transmitting text via the Internet. The text transmission is delivered to an IP Relay call center, where a communications assistant (CA) converts the user’s text to speech for the hearing party and converts that party’s speech to text for the IP Relay user.

3. IP Relay is supported by the TRS Fund in accordance with a methodology approved by the Commission in 2007. A base level of per-minute compensation is approved based on the weighted average of providers’ reasonable costs and remains effective for a three-year period. In addition, an adjustment factor is set to be applied to the base amount to determine per-minute compensation for the second and third years, which reflects an increase due to inflation, offset by a decrease due to cost efficiencies. The base compensation amount also is subject to upward adjustment to account for exogenous costs, *i.e.*, those costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment. At the end of each three-year period, the base compensation level is reset based on average provider costs. The current compensation period runs from July 1, 2019, to June 30, 2022.

4. Since 2007, there have been substantial changes in the circumstances relevant to TRS Fund support of IP Relay. In 2013 and 2014, four of the five IP Relay providers exited the market, and IP Relay demand declined precipitously. After November 2014, Sprint Corporation (now T-Mobile USA,

Inc.) was the sole provider of IP Relay service, and demand stabilized.

5. In response to these developments, the Consumer and Governmental Affairs Bureau (CGB or Bureau) has taken a number of steps to ensure that TRS Fund support for IP Relay was sufficient to sustain the service and allow the remaining provider to ascertain and meet the needs of consumers relying on it for functionally equivalent telephone service.

6. In 2016, the Bureau partially waived the Commission rule prohibiting TRS Fund support of IP Relay provider-directed outreach activities to allow T-Mobile to effectively educate deafblind consumers about its service and solicit feedback on how to improve it. The Bureau renewed this waiver in subsequent years.

7. In 2019, the Bureau allowed recovery of an operating margin, determined as a percentage of annual expenses, in lieu of the rate of return on capital investment previously allowed. In renewing the previously granted waiver permitting provider recovery of expenses for outreach to the deafblind community, the Bureau expanded the scope of that waiver to include outreach to other potential users of this service.

8. In November 2018, Sprint (now T-Mobile) filed a petition for rulemaking requesting a new compensation methodology. The company proposed that the Commission adopt a new approach based substantially on the Multi-State Average Rate Structure (MARS) compensation plan for TTY-based TRS offered through state TRS programs.

9. The Commission proposes to amend the compensation rules for IP Relay to take account of the changed environment in which this service is provided. The Commission believes it should continue the practice of periodically re-setting the compensation level based on determinations of reasonable provider cost. As the Commission explained last year when setting compensation for Internet Protocol Captioned Telephone Service (IP CTS) in the *IP CTS Compensation Methodology Order*, published at 85 FR 64971, October 14, 2020, over a long period “the Commission has developed a consistent approach to determining the reasonable costs of providing TRS, which can be applied without imposing undue administrative burdens on either providers or the Commission.” Further, “[a]lthough any ratemaking method is subject to imprecision, provider cost data, which is subject to audit, has been reasonably reliable and consistent,” and “the Commission’s determinations regarding allowability of costs are solidly

reasoned and have been upheld on judicial review.” The Commission seeks comment on whether these general observations continue to hold true for IP Relay.

10. The Commission proposes to continue setting the compensation level for a multi-year period, subject to annual adjustment based on predetermined factors. The Commission proposes a number of changes in how reasonable costs are determined, and seeks comment on whether to change the specific duration of the compensation period and on the appropriate criteria for annual adjustment of the compensation level, as well as other aspects of the methodology. The Commission seeks comment on which specific aspects of the cost-based approach have been problematic in the IP Relay context and how they could be improved. The Commission seeks additional comment on the MARS-based alternative proposed in T-Mobile’s petition for rulemaking, and invites commenters to suggest additional alternative compensation methodologies.

Benefits of IP Relay

11. The Commission seeks granular information on which segments of the TRS-eligible population primarily use and benefit from this service. How many deafblind individuals use IP Relay and how many minutes of use do they represent? The Commission seeks comment on the best way to determine or estimate these numbers. What features of IP Relay are critical for this customer segment? What proportion of IP Relay users represent people who became deaf or hard of hearing early in life, and are unable to use VRS because they do not know ASL? To what extent is IP Relay used to make 911 calls, and what advantages does it offer in this regard? To what extent do other forms of TRS (or other communications services, such as real-time text) provide an effective substitute to IP Relay for individuals who might otherwise rely on the service as their sole or primary means of telephone communication? To what extent do people who lose hearing later in life find IP Relay beneficial, despite the availability of other options, such as IP CTS? Would a person with close to 100% hearing loss find IP Relay preferable to IP CTS? Would such a preference depend on how much an individual’s speech is affected, or other factors? The Commission seeks comment on whether there has been enough outreach and education to the deafblind community by the Commission and TRS providers and whether more is needed. Would increased outreach and education to the deafblind community regarding the availability and merits of each type of TRS increase legitimate demand for IP Relay?

Allowable Expenses

12. The Commission has made a number of determinations, both for TRS generally and for specific relay services, as to whether various categories of costs are allowable for recovery from the TRS Fund as reasonable costs of providing TRS. The Commission seeks comment on possible amendments to the allowable cost rules.

13. *Outreach.* The Commission proposes to rescind the current prohibition on outreach recovery by IP Relay providers and seeks comment on this proposal, its costs and benefits, and the underlying rationale stated below.

14. First, CGB has found that in the absence of competition, providing economic incentive for outreach and education by the sole service provider may be critical to effectively educate consumers—including consumers who are deafblind and others—regarding the availability of and improvements to the service. The Commission invites comment on the extent to which outreach for this purpose continues to be needed and the resulting benefits.

15. Second, with only one IP Relay provider, the Commission believes that provider outreach expenditures in this context are more likely to be focused appropriately on educating existing and potential IP Relay users about the service rather than on encouraging or preventing “churn” among existing customers, would therefore be more effective for their intended purpose than when the outreach ban was adopted, and would not likely duplicate other outreach efforts. Finally, a review of the outreach reports submitted by T-Mobile in response to the resumption of compensated outreach activity has not shown that they are misdirected toward ineligible users. Therefore, the Commission does not believe such efforts would contribute to a recurrence of the kind of misuse of IP Relay that occurred prior to 2015. The Commission seeks comment on these assumptions.

16. The Commission seeks comment on whether to limit allowable outreach expenses to a specified percentage or amount, and, if so, what percentage or amount should be allowed. How should the Commission measure the effectiveness of outreach efforts—based on the number of new users or on some other basis? Should the Commission continue to require the filing of regular reports to ensure that outreach expenses are beneficial and effectively educating consumers about IP Relay service, and if so,

on what schedule? Should the Commission continue to require separate reporting of general and deafblind outreach activities and the associated costs?

17. *Indirect Overhead.* The Commission seeks comment on whether to modify, with respect to IP Relay, the Commission's rule allowing recovery for only those overhead costs directly related to and directly supporting the provision of relay service and whether there is a continuing need for this rule in the IP Relay context.

18. First, is the current rule effectively mandated by section 225 of the Communications Act of 1934, as amended? 47 U.S.C. 225. Given that only some current providers of TRS are common carriers, does the Commission have more flexibility in determining what costs are reasonable?

19. Second, the Commission seeks comment on the cost-effectiveness of the current rule, relative to alternatives, notably allowing a reasonable contribution toward overhead costs. To what extent is it feasible for a multi-service provider to track administrative costs directly, to the extent they are attributable to the provision of TRS? Is it unduly burdensome to require a demonstration of cost causation for such costs, *e.g.*, by maintaining time records for staff time attributable to IP Relay? What specific kinds of administrative costs that are not currently recoverable would be recovered if allocation of overhead were permitted? The Commission seeks comment on whether there are circumstances specific to the current context of IP Relay, such as the presence of only one provider, that make the rule more burdensome or less appropriate for application to this service, compared to other forms of TRS? How much would allowing support for such costs increase per-minute IP Relay compensation? Is there any risk T-Mobile would abandon TRS if it continued to receive no contribution to overheads but continued to be fully compensated for all costs attributed to TRS?

20. If the Commission were to allow recovery of overhead costs, *i.e.*, administrative costs not directly attributable to TRS, how should such costs be allocated—based on the percentage of total revenues derived from IP Relay, percentage of total company costs, or by some other method? How could the Commission or Fund administrator effectively audit such allocations?

21. *Other Allowable Costs.* Are there other costs incurred in the provision of IP Relay that the Commission's methodology should allow?

Operating Margin

22. The Commission proposes to amend its compensation rules to affirm that the IP Relay compensation level should include an operating margin—*i.e.*, an allowance for recovery of a designated percentage of allowed expenses, in lieu of return on investment. The Commission seeks comment on this proposal and its cost-effectiveness.

23. The Commission seeks comment on what percentage of allowable expenses constitutes a reasonable operating margin for IP Relay. By what criteria should the allowed operating margin be determined? Is business risk assessment an appropriate measure for setting the operating margin for IP Relay? Due to the level of business risk, or for other reasons, should the operating margin for IP Relay be different from that for other forms of TRS? Is the operating margin of 12.35%, determined by the Bureau in 2019, a reasonable margin going forward, or should a different allowed margin be selected? Have there been recent changes in capital markets that would support increasing or decreasing this margin? The Commission seeks comment on whether future determinations of an operating margin for IP Relay should be made by the Commission itself or could be delegated to the Bureau.

Projected versus Historical Costs

24. The Commission proposes to return to the pre-2019 practice of using only projected costs and demand as the basis for calculating the base compensation level for IP Relay and seeks comment on this proposal and its cost-effectiveness relative to other approaches. The Commission invites the submission of evidence regarding the likelihood that the current level of cost increases in IP Relay are likely to continue or to prove to be a temporary phenomenon.

Compensation Period and Adjustments

25. *Duration of Compensation Period.* The Commission proposes to continue setting IP Relay compensation for a multi-year period and seeks comment on this proposal and whether it will provide benefits in the IP Relay context.

26. Assuming that the Commission continues setting compensation for a multi-year period, should the duration continue to be three years? A longer compensation period, such as four or five years, would potentially offer a provider greater certainty for the purpose of long-term planning and allow retention of a larger portion of any profits produced by efficiency improvements—as well as reducing the administrative burden for the provider and the Commission. Would these benefits outweigh the risks

posed by the potential for unpredicted cost increases or fall-off in demand? Alternatively, would a shorter period be preferable, to address cost predictability concerns, while retaining some of the benefit of a multi-year plan? The Commission seeks comment on the extent to which a compensation period of longer than three years would make a material difference to such firms' capacity to provide and improve IP Relay service. Recognizing that, if over a given compensation period, costs were to rise substantially, and providers would have strong incentives to present a robust petition explaining their need, and thus obtain relief, to what extent would any benefits of a longer compensation period justify the risks of overcompensation that would occur if costs were to fall significantly over the period?

27. Are IP Relay costs sufficiently predictable to warrant setting a base compensation amount for a multi-year period? Alternatively, is the variability in IP Relay costs sufficiently unpredictable that the Commission should reassess the IP Relay compensation level annually? The Commission seeks comment on the cost-effectiveness of this alternative approach relative to the current approach or other alternative approaches. Would the resulting year-to-year uncertainty and reduced incentives for efficiency and innovation be outweighed by the greater flexibility to ensure full cost recovery in response to unpredicted cost and demand changes? Are there net benefits of this alternative that would outweigh any increased administrative burden on the provider and the Commission?

28. The Commission also seeks comment on whether compensation decisions based on cost determinations, whether made annually or at longer intervals, should be made by the full Commission, or by the Bureau under delegated authority. Further, should other decisions—*e.g.*, approval of annual changes based on preset adjustment factors, determinations regarding exogenous cost claims, and grant or denial of requests for waiver of compensation rules—be made at the Commission or Bureau level?

29. *Compensation Adjustments During a Multi-Year Period.* If the Commission continues setting IP Relay compensation for a multi-year period, it seeks comment on whether to continue the current practice of adjusting the compensation level in subsequent years of the cycle, and if so, whether to modify the criteria for such adjustments.

30. *Inflation Adjustment.* Should the Commission continue to apply an annual inflation adjustment to the base compensation level, and if so, how should the adjustment be determined? The current methodology uses an inflation factor based on the Gross Domestic Product – Price Index (GDP-

PI) to adjust the compensation level upward. Is the GDP-PI a reasonably accurate predictor of inflation in IP Relay costs? Would another price index provide a better measure? For example, because IP Relay is currently a labor-intensive service, should the Commission select a measure from the Bureau of Labor Statistics' (BLS) Employment Cost Index: Historical Listing Volume III (April 2021), available at <https://www.bls.gov/web/eci/echistrynaics.pdf>, which tracks measures of labor cost for various industry segments—for example, the seasonally-adjusted “office and administrative support,” “service-providing industries,” “other services except public administration,” “or the non-seasonally-adjusted “office and administrative support,” indices? Which measure or measures of inflation in this index would be most appropriate for IP Relay? Is there another general or sector-specific cost index that would more accurately predict changes in IP Relay cost?

31. *Efficiency Adjustment.* The Commission also established an efficiency factor, used to adjust the compensation level in a downward direction to reflect expected productivity improvements. The Commission seeks comment on how best to measure expected efficiency gains for this particular service. What are the potential sources of annual efficiency gains in IP Relay, and how should the extent of annual efficiency gains be estimated? Alternatively, should the Commission eliminate the efficiency factor?

32. *Exogenous Costs.* The IP Relay base compensation level can be adjusted upward to permit recovery of exogenous costs, which are “costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment,” such as a new service requirement adopted by the Commission. Should the Commission retain this aspect of the methodology? If so, are there other types of exogenous costs that warrant inclusion? Should the Commission broaden the definition of exogenous costs? Should the Commission apply the allowable cost criteria adopted in the *2017 VRS Compensation Order*, published at 82 FR 39673, August 22, 2017, which allow upward compensation adjustment for well-documented exogenous costs that (1) belong to a category of costs that the Commission has deemed allowable, (2) result from new TRS requirements or other causes beyond the provider's control, (3) are new costs that were not factored into the applicable compensation rates, and (4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its revenues?

33. *Other Adjustments.* In addition to adjustments for inflation, efficiency, and exogenous costs, are there other types of adjustments to the IP Relay compensation level that the Commission should be

making in subsequent years of a multi-year rate cycle?

Alternative Compensation Methodologies

34. *Hybrid MARS Approach.* T-Mobile proposes that in setting a new IP Relay compensation level, the Commission should take as a starting point the per-minute compensation for interstate TTY-based TRS, which is currently set using the MARS method. The Commission would multiply the average per-minute rate of TTY-based TRS compensation by the projected number of IP Relay minutes, subtract those provider costs that are incurred only in providing TTY-based TRS, and add costs that are incurred only in providing IP Relay. The resulting funding requirement would be divided by projected IP Relay demand to determine the per-minute compensation level.

35. The Commission invites advocates of this approach to identify the specific categories of costs they believe would be appropriate to add and subtract to achieve an appropriate per-minute compensation level using such a hybrid MARS methodology. Which categories of TTY-based TRS costs, specifically, are not incurred to provide IP Relay, which categories of IP Relay costs are not incurred to provide TTY-based TRS, and what are the estimated current costs in each of those categories?

36. The Commission is unpersuaded that it would be appropriate to use a MARS compensation approach as a starting point for setting IP Relay compensation, and believes that attempting to revert to a version of the MARS methodology would likely result in significant overcompensation for IP Relay, wasting TRS funds. The Commission also is not persuaded that T-Mobile's proposed methodology would be any less difficult to apply or subject to inaccuracy than the current methodology, and T-Mobile's proposal appears inconsistent with recent Commission precedent. The Commission seeks comment on the concerns stated above. Are there other factors that merit consideration of T-Mobile's proposal? Would the hybrid MARS approach better serve the compensation-setting policy goals articulated above?

37. *Other Methodologies.* Are there other compensation methodologies that the Commission should consider for IP Relay to achieve its policy goals?

Initial Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant

economic impact on a substantial number of small entities by the policies and rules proposed in the Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the Notice provided in the item. The Commission will send a copy of the entire Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of the Proposed Rules

39. In the Notice, the Commission proposes to reform the compensation methodology for IP Relay. To develop a complete record, the Commission seeks comment on whether and how to modify the process for setting projected-cost-based IP Relay compensation, including whether certain costs that are currently not allowed should be compensable, the methodology for calculating the compensation amount, and alternative approaches. The Commission takes these steps to allow recovery of reasonable provider costs and ensure that functionally equivalent IP Relay is provided in the most efficient manner.

Legal Basis

40. The authority for this proposed rulemaking is contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225.

Small Entities Impacted

41. The proposals in the document FCC 21-95 will affect the obligations of IP Relay providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

42. The proposed compensation methodology will not create new reporting, recordkeeping, or other compliance requirements.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

43. Throughout the Notice, the Commission is (1) taking steps to minimize the impact on small entities by proposing reforms to the IP Relay compensation methodology that would ensure that providers of IP Relay are fairly compensated for the provision of IP Relay, including considering significant alternatives by identifying and seeking comment on multiple methodologies for compensation; and (2) considering various options to determine the best compensation methodology for ensuring functionally equivalent service and maintaining an efficient IP Relay market over the long term in accordance with the

Commission's statutory obligations. The Notice seeks comment on the effect these proposals will have on all entities that have the potential to provide IP Relay, including small entities.

44. The Notice seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Notice. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching its final conclusions and acting in this proceeding.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

45. None.

Federal Communications Commission.

Marlene Dortch,
Secretary,
Office of the Secretary.

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